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Attorneys for Defendant
VISA U.S.A. INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SHERI L. KENDALL, dba BALA HAIR
SALON, JAMES MASER, MAIZ
HOLDING COMPANY, dba PICANTE
COCINA RESTAURANT, on Behalf of
Themselves and All Others Similarly
Situating,
Plaintiffs,

v.

VISA U.S.A. INC., MASTERCARD
INTERNATIONAL, INC., BANK OF
AMERICA, N.A., a subsidiary of BANK
OF AMERICA CORPORATION, WELLS
FARGO BANK, N.A., a subsidiary of
WELLS FARGO & COMPANY, U.S.
BANK, N.A., a subsidiary of U.S.
BANCORP,
Defendants.

Case No.: C04-4276 JSW

**DEFENDANT VISA U.S.A. INC.'S
NOTICE OF MOTION AND
MOTION TO DISMISS AND/OR TO
STRIKE CERTAIN ALLEGATIONS**

FED. R. CIV. P. 12(b)(6), 12(f)

Hearing: July 8, 2005
Time: 9:00 a.m.
Courtroom: Two, 17th Floor
Honorable Jeffrey S. White

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on July 8, 2005 at 9:00 a.m., or as soon thereafter as
3 the matter may be heard, in the Courtroom of the Honorable Jeffrey S. White, Courtroom 2,
4 17th floor of the United States District Court, Northern District of California, located at 450
5 Golden Gate Avenue, San Francisco, California, defendant Visa U.S.A. Inc. ("Visa") will,
6 and hereby does, move for an order dismissing plaintiffs' claims for damages brought under
7 the First and Second Claims for Relief and plaintiffs' Third and Fourth Claims for Relief in
8 their entirety, and/or striking certain allegations, in the First Amended Class Action Antitrust
9 Complaint and Jury Demand ("FAC").

10 This motion is made pursuant to Fed. R. Civ. P. 12(b)(6) and 12(f) on the grounds that
11 plaintiffs, who do not pay interchange fees, lack standing as indirect purchasers under *Illinois*
12 *Brick Co. v. Illinois*, 431 U.S. 720 (1977) to pursue a damages claim under Section 1 of the
13 Sherman Act, 15 U.S.C. § 1, challenging Visa's default interchange fees; that, additionally,
14 plaintiffs' Third and Fourth Claims for Relief each fails to state a claim upon which relief
15 may be granted; and that plaintiffs plead immaterial and impertinent allegations regarding
16 "price differentials." (FAC ¶ 29).

17 This motion will be based upon this Notice; the Memorandum of Points and
18 Authorities in Support of Defendant Visa U.S.A. Inc.'s Motion To Dismiss And/Or To Strike
19 Certain Allegations; the record in this case; any additional supporting materials or argument
20 presented at or before the hearing on this matter; and all pleadings on file in this action.

21 DATED: June 3, 2005

Respectfully submitted,

22
23 HELLER EHRMAN LLP

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25 By s/Marie L. Fiala

Marie L. Fiala

Attorneys for Defendant

VISA U.S.A. INC.